

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TOMI J. BAKER,

Plaintiff,

v.

COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

Case No. C23-5621-RSM

ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
ATTORNEY FEES UNDER THE  
EQUAL ACCESS TO JUSTICE  
ACT, 28 U.S.C. § 2412(D)

This matter comes before the Court on Plaintiff's Stipulated Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. #15.

Under EAJA, the Court must award attorney's fees to the prevailing party in an action such as this unless it finds the government's position was "substantially justified" or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). EAJA creates a presumption that fees will be awarded to a prevailing party, but Congress did not intend fee shifting to be mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995); *Zapon v. United States Dep't of Justice*, 53 F.3d 283, 284 (9th Cir. 1995). Rather, the Supreme Court has interpreted the term "substantially justified" to mean that a prevailing party is not entitled to recover fees if the government's position is "justified to a degree that could satisfy a reasonable person." *Pierce v.*

1 *Underwood*, 487 U.S. 552, 566 (1992). The decision to deny EAJA attorney's fees is within the  
2 discretion of the court. *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002). Attorneys' fees  
3 under EAJA must be reasonable. 28 U.S.C. § 2412(d)(2)(A); *Hensley v. Eckerhart*, 461 U.S. 424,  
4 433 (1983).

5 This Motion is timely. Furthermore, upon review of the Motion and the record, the Court  
6 determines that Plaintiff is the prevailing party and the Government's position was not  
7 substantially justified. Furthermore, "Plaintiff contacted Defendant [Commissioner] regarding  
8 this application and no objection was made against the total requested fee." Dkt. #15 at 1.  
9 Defendant Commissioner has not filed any objection nor response to Plaintiff's Motion. Under  
10 Local Civil Rule 7(b)(2), "[e]xcept for motions for summary judgment, if a party fails to file papers  
11 in opposition to a motion, such failure may be considered by the court as an admission that the  
12 motion has merit." The Court concludes that Plaintiff's requested EAJA fees in the amount of  
13 \$9,175.81 are reasonable.

14 For the reasons set forth above, the Court ORDERS that Plaintiff's Motion, Dkt. #15, is  
15 GRANTED. The Court awards Petitioner fees in the amount of \$9,175.81 to be paid by Defendant,  
16 subject to verification that Plaintiff does not have a debt which qualifies for offset against the  
17 awarded fees, pursuant to the Treasury Offset Program discussed in *Astrue v. Ratliff*, 560 U.S. 586  
18 (2010). If Plaintiff has no debt, the check shall be made out to Plaintiff's attorney, H. Peter Evans.  
19 If Plaintiff has a debt, then the check for any remaining funds after offset of the debt shall be made  
20 to Plaintiff's attorney.

21 DATED this 25<sup>th</sup> day of March, 2024.

22 

23 RICARDO S. MARTINEZ  
24 UNITED STATES DISTRICT JUDGE